

Message Text

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ACTION STR-05

INFO OCT-01 IO-13 ISO-00 STRE-00 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
EA-10 /099 W

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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 1661

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USMTN

STR FOR ACTION

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E.O. 11652: N/A

TAGS: MTN, ETRD

SUBJECT: GOVERNMENT PROCUREMENT PLURILATERAL - SEPT. 29

REF: (A) GENEVA 6458, (B) STATE 220879, (C) GENEVA 7549,

1. SUMMARY: SECOND PLURILATERAL DRAFTING SESSION OF MAJOR DEVELOPED COUNTRIES PROGRESSED SMOOTHLY WITH AD REFERENDUM AGREEMENT REACHED ON DRAFT TEXTS (WITH BRACKETS) FOR SCOPE AND COVERAGE AND FOR TENDERING PROCEDURES (TEXTS HAND-CARRIED TO WASHINGTON BY HAUGH-OMB). GROUP AGREED TO MEET AGAIN INFORMALLY THE WEEK OF OCTOBER 17 TO DISCUSS DRAFT TEXTS PROMISED BY EUROPEAN COMMUNITY ON SPECIAL AND DIFFERENTIAL TREATMENT (S&D), TRANSPARENCY, EX-POST INFORMATION, AND DISPUTE SETTLEMENT. FORMAL SUBGROUP MEETING TO LIMITED OFFICIAL USE

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BE HELD WEEK OF NOVEMBER 7 TO EXPOSE OTHER DELS TO INFORMAL TEXTS. END SUMMARY.

2. THE SECOND PLURILATERAL SESSION WAS HOSTED BY U.S. AND BEGAN WITH STATEMENT BY MTN DEL (NEWKIRK) REITERATING U.S. VIEWS ON GOVERNMENT PROCUREMENT WORK PLAN FOR THIS FALL. MTN DEL STRESSED OBJECTIVE OF TABLING

A NEGOTIATING DRAFT BY DECEMBER 15 AND OUTLINED A TWO-PRONGED APPROACH TO FALL WORK PROGRAM. IN THE FIRST INSTANCE, U.S. PROPOSED THAT INFORMAL DEVELOPED COUNTRIES DRAFTING GROUP CONTINUE TO MEET PLURILATERALLY TO DEVELOP LANGUAGE ON MAJOR AREAS OF GOVERNMENT PROCUREMENT CODE. WHILE THIS EFFORT CONTINUES, MTN DEL SUGGESTED WE BEGIN PROCESS OF EXPOSING DEVELOPING COUNTRIES TO WORK OF DEVELOPED COUNTRIES. AS A FIRST STEP IN THIS PROCESS THE DEVELOPED COUNTRIES (EC, CANADA, JAPAN, NORDICS, SWISS, U.S.) SHOULD SPEAK INDIVIDUALLY WITH DIFFERENT DEVELOPING COUNTRIES TO EXPLAIN WORK WE HAVE BEEN CONDUCTING AND TO ELICIT SUPPORT FOR DRAFTS SO FAR COMPLETED. AFTER SUCH DISCUSSIONS, A FORMAL SUBGROUP MEETING COULD BE HELD TO EXPOSE ALL COUNTRIES TO THE DRAFTS, AND "LEGITIMIZE" THE TEXTS FOR FUTURE WORK. ONCE SOME LEVEL OF CONSENSUS ON THE DRAFTS HAS BEEN REACHED, THE GATT SECRETARIAT COULD THEN BE ASKED TO ASSEMBLE THESE DRAFTS INTO A NEGOTIATING DOCUMENT. THERE WAS CONSENSUS TO PROCEED ON THIS BASIS.

3. EC DEL (DERISBOURG) STATES THAT 113 COMMITTEE WOULD BE MEETING WEEK OF OCTOBER 3 TO DISCUSS EC DRAFTS ON S&D, TRANSPARENCY, AND DISPUTE SETTLEMENT. HE EXPECTED THAT APPROVAL WOULD BE GIVEN AT THIS MEETING AND THAT BY THE END OF THE WEEK THESE DRAFTS COULD BE DISTRIBUTED TO MEMBERS OF THE INFORMAL WORKING GROUP. SWISS DEL LIMITED OFFICIAL USE

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(LEMPEN) ALSO INDICATED THAT THEIR WORK WAS PROGRESSING ON PROMISED PAPERS ON S&D, EX-POST PUBLICITY, AND RELATIONSHIP OF THE GATT TO A GOVERNMENT PROCUREMENT CODE. WHILE HE DID NOT OFFER A SPECIFIC DATE FOR DISTRIBUTION OF THESE PAPERS, HE SAID THE GOS WOULD ATTEMPT TO DISTRIBUTE THEM IN SUFFICIENT TIME TO BE CONSIDERED WITH THE CORRESPONDING EC DRAFTS.

4. THE FOLLOWING CONTAINS A PARAGRAPH-BY-PARAGRAPH OUTLINE OF TECHNICAL DISCUSSIONS AND CHANGES. DELS AGREED ON AN AD REFERENDUM BASIS AND WITH BRACKETS, THAT TEXTS COULD BE UTILIZED FOR NEGOTIATING PURPOSES.

5. TECHNICAL SPECIFICATIONS - DISCUSSION REVERTED TO TECHNICAL SPECIFICATIONS DRAFT AGREED UPON AT LAST MEETING. CERTAIN REFINEMENTS IN WORDING, AS REPORTED IN REF (A), WERE AGREED UPON. ADDITIONALLY, CANADIAN DEL ADDED BRACKETED LANGUAGE AT THE END OF PARAGRAPH (A) WHICH PROVIDES OPTION TO MAKE OBLIGATIONS IN PARA (A) IDENTICAL TO CORRESPONDING PARAGRAPH IN DRAFT STANDARDS CODE.

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INFO OCT-01 ISO-00 STRE-00 EUR-12 EA-10 FEA-01 AGRE-00
CEA-01 CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01
INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01
AID-05 SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02
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6. TENDERING PROCEDURES - CANADIAN DRAFT (CD) PARA 1 -
NO CHANGES. CD PARA 2(A) AMENDED TO INCLUDE SUGGESTED
LANGUAGE IN REF (B). "INADEQUATE TIME" WAS BRACKETED
AT THE REQUEST OF THE EC SINCE THE EC WOULD PREFER TO
HAVE SPECIFIC RATHER THAN GENERAL TIME LIMITS, AND PRO-
MISED TO SUBMIT DRAFT LANGUAGE TO INCORPORATE THEIR
VIEWPOINT. ADDITIONALLY, PHRASE CONCERNING "PRE-
QUALIFICATION PROCEDURES" IN PARA 2(A) WAS DROPPED DUE
TO SIGNIFICANT DIFFERENCE OF UNDERSTANDING OF MEANING
OF THAT PHRASE AMONG PARTICIPANTS IN THE ROOM.
CD PARA 2(B) - PHRASE WAS ADDED AT THE END OF THIS
PARAGRAPH TO INSURE THAT THE REQUIREMENTS IN THE PARA-
GRAPH APPLY TO BOTH MFN AND NATIONAL TREATMENT SITUATIONS.
CD PARA 2(C) - SENTENCE WAS ADDED TO PARA 2(C), AT THE
REQUEST OF THE EC, TO ASSURE THAT SUPPLIERS WHICH HAVE
NOT BEEN PREVIOUSLY QUALIFIED SHALL HAVE THE RIGHT TO
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PARTICIPATE IN ANY PARTICULAR PROCUREMENT PROCESS.
CD PARA 2(D) - "REASONABLY SHORT TIME" AT THE END OF
PARA 2(D) WAS BRACKETED AT THE REQUEST OF THE EC.
AGAIN THE EC WISHES TO INSERT SPECIFIC TIME LIMITS IN
THE PARAGRAPH.

7. CD PARAGRAPHS 3, 4, 5 - PARAGRAPHS 3, 4, AND 5
WERE DISCUSSED TOGETHER DUE TO THEIR INTER-RELATIONSHIP.
PARA 3 SETS FORTH THE GENERAL REQUIREMENT FOR PUBLICATION
OF NOTICES, PARA 4 SETS FORTH THE INFORMATION WHICH MUST
BE INCLUDED IN NOTICES, AND PARA 5 SETS FORTH AN EXCEP-
TION TO THE PUBLICATION OF NOTICES. WITH REGARD TO
PARA 3 THERE WAS A GENERAL DISCUSSION OF WHAT WILL BE
INCLUDED IN ANNEX C. IT WAS GENERALLY AGREED THAT THIS
QUESTION WOULD BE MORE PROPERLY ADDRESSED SUBSEQUENTLY
WHEN DISCUSSING CONTENTS OF THE ANNEXES. FYI - IN A
PRIVATE CONVERSATION, THE CANADIAN DEL EXPRESSED THE
VIEW THAT ANNEX C WOULD CONTAIN ALL RELEVANT PUBLICATIONS
OF A COUNTRY, AND THAT EACH COUNTRY WOULD UTILIZE THE
APPROPRIATE PUBLICATION FOR PUBLIC ANNOUNCEMENTS, E.G.
FEDERAL REGISTER FOR REGULATIONS, COMMERCE DAILY BULLETIN
FOR PROCUREMENT NOTICES. END FYI. THE CANADIANS
PURPOSEFULLY INCLUDED PARA 5 FOR REASONS OUTLINED IN
PARA 3 OF REF (C). THIS CORRESPONDS TO THE CURRENT
CANADIAN SYSTEM FOR EX-ANTE PUBLICITY. THE CANADIANS
WERE THE ONLY ONES IN THE ROOM TO ESPOUSE THIS VIEWPOINT
WITH ALL OTHER DELS STRESSING THE NECESSITY OF EX-ANTE
PUBLICITY FOR ALL PROPOSED PURCHASES. THE CANADIANS
WERE UNYIELDING AND IT WAS DECIDED TO PUT THE ENTIRE
PARA 5 IN BRACKETS. FYI - SUBSEQUENT TO THE MEETING
CANADIAN DEL INDICATED EVENTUAL WILLINGNESS TO
CHANGE THEIR EX-ANTE PUBLICITY SYSTEM. THEY, HOWEVER,
SEE THIS AS A MAJOR ALTERATION OF THEIR CURRENT SYSTEM.
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THE CANADIAN DEL, SOMEWHAT OPTIMISTICALLY, FEELS THAT
CHANGE IN THEIR EX-ANTE PUBLICITY POSITION CAN BE USED
TO PRESS THE EC TO MOVE TOWARDS A SATISFACTORY EX-POST
PUBLICITY POSITION. END FYI. APPROPRIATE PORTIONS OF
PARA 3 WERE ALSO BRACKETED TO CORRESPOND TO BRACKETS
IN PARA 5.

8. CD PARA 6 - THE LAST SENTENCE OF PARA 6 WAS ALTERED
TO CORRESPOND TO PARA 2(C).

9. CD PARA 7 - THE FIRST PARAGRAPH IN PARA 19 OF THE
OECD DRAFT WAS REINSERTED AS A FIRST PARAGRAPH IN
CD PARA 7. THE CANADIANS HAD DELETED THIS PARAGRAPH
INITIALLY BECAUSE THEY FELT THAT THE WORDS "ANY SIGNI-

FICANT INFORMATION" WAS SUFFICIENT TO COVER THE PROVISIONS IN THE FIRST PARAGRAPH OF THE OECD DRAFT. OTHERS, HOWEVER, FELT THAT BOTH PARAGRAPHS WERE NECESSARY AND THAT THERE WAS A SLIGHT DIFFERENCE IN MEANING BETWEEN THE TWO.

10. SUBSEQUENT TO CD PARA 9 U.S. PARAGRAPH ON SUPPLIER'S INQUIRY RIGHTS WAS ADDED.

1. CD PARA 10(D) (NOW PARA 11(D)) WAS CHANGED PURSUANT TO U.S. REQUEST TO APPLY ONLY TO OPEN TENDERING. "IN SELECTIVE TENDERING" IN PARA 10(G) WAS BRACKETED AT U.S. REQUEST. SOME DELS FELT THAT THIS PARAGRAPH SHOULD APPLY TO BOTH OPEN AND SELECTIVE TENDERING.

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CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
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12. CD PARA 11(A) (NOW PARA 12(A)) WAS SPLIT INTO TWO PARAGRAPHS. SOME DELEGATIONS STATED THAT HIGHLY SPECIALIZED TECHNICAL PRODUCTS, AND REPLACEMENT PARTS, WERE SEPARATE IDEAS AND WOULD BE MORE APPROPRIATELY COVERED IN SEPARATE PARAGRAPHS. WHERE APPROPRIATE THE PHRASE "HIGHLY SPECIALIZED TECHNICAL CHARACTERISTICS" WAS INSERTED. ADDITIONALLY THE JAPANESE AND NORDICS

WANTED INSERTED IN CD PARA 11 (NOW PARA 12), PARAGRAPH 14(A)(5) FROM THE OECD DRAFT (MTN/NTM/W/81). THEIR CONCERN WAS THAT DESPITE THE DESCRIPTIONS IN CD PARA 11 THE PROVISIONS COVERED IN THE CORRESPONDING OECD PARAGRAPHS WERE NOT INCLUDED.

13. CD PARA 12 (NOW PARA 13) - U.S. POINT CONCERNING DISTRIBUTION OF DRAFTS TO A CENTRAL SECRETARIAT WAS RAISED. EC INDICATED THAT ITS PAPER ON TRANSPARENCY LIMITED OFFICIAL USE

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INCLUDES OUR SUGGESTION. ACCORDINGLY, THE GROUP AGREED TO WAIT UNTIL THE EC DRAFT WAS AVAILABLE BEFORE CONDUCTING IN DEPTH DISCUSSION ON PUBLIC INFORMATION.

14. CD PARA 14 (NOW PARA 15) WAS ENTIRELY BRACKETED PENDING RECEIPT OF THE EC PAPER ON EX-POST PUBLICITY.

15. SCOPE AND COVERAGE - CD PARA (A) - EXCEPT FOR THE JAPANESE, THERE WAS GENERAL CONSENSUS TO HAVE AGREEMENT APPLY "TO THE AGENCIES AND ENTITIES COVERED BY THE AGREEMENT". THE JAPANESE, HOWEVER, WERE UNWILLING TO ACCEPT THIS FORMULATION AT THIS TIME AND INSTEAD OPTED FOR ACCEPTANCE OF THE BRACKETED LANGUAGE "FOR IMMEDIATE OR ULTIMATE CONSUMPTION IN GOVERNMENTAL USE". FYI - JAPANESE FULLY PARTICIPATED IN THIS MEETING IN CONTRAST TO USUAL NON-PERFORMANCE IN NTM WORK. END FYI.

16. CD PARA (B) WAS REWRITTEN BY CANADA PRIOR TO THE MEETING AND DISTRIBUTED AT THE MEETING FOR CONSIDERATION IN PLACE OF THEIR EARLIER DRAFT. GROUP AGREED TO REVERT TO PARAGRAPH AT NEXT MEETING.

17. SCOPE AND COVERAGE - CANADIAN DEL (CLARK) OUTLINED CURRENT CANADIAN THINKING ON SCOPE AND COVERAGE AS ANALOGOUS TO TARIFFS. SPECIFICALLY CANADIANS SEE NEGOTIATIONS TO SPECIFICALLY DELINEATE ENTITIES COVERED BY CODE. ONCE SUCH ENTITIES ARE AGREED ON, THEY WOULD BE "BOUND". MODIFICATION OF A COUNTRY'S LIST WOULD REQUIRE PROCEDURES SIMILAR TO GATT ARTICLE XXVIII. TO ADD ADDITIONAL ENTITIES NEGOTIATIONS SIMILAR TO GATT ARTICLE XXVIII BIS COULD BE UNDERTAKEN. TO BEGIN SUCH NEGOTIATIONS, CANADIANS ENVISAGE UTILIZATION OF A REQUEST PROCEDURE. OTHER DELS AGREED TO REFLECT ON CANADIAN LIMITED OFFICIAL USE

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SUGGESTION AND DISCUSS IT LATER.

18. NEXT PLURILATERAL SESSION WILL CONCENTRATE PRIMARILY ON EC DRAFTS. AGREEMENT ON S&D DRAFT WILL BE PARTICULARLY IMPORTANT SINCE IT WOULD BE USEFUL IN BRINGING LDC'S INTO DISCUSSIONS PRIOR TO FORMAL SUB-GROUP MEETING. OTHER PRIMARY TOPICS WILL INCLUDE TRANSPARENCY AND DISPUTE SETTLEMENT.

19. DRAFTED BY SHELLEY. MCDONALD

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Message Attributes

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